

**OPINION  
45-200**

September 6, 1945            (OPINION)

MOTOR VEHICLE

RE: Defense Transportation-License-Penalty

This will acknowledge your letter of August 29, in which you advise that the office of defense transportation is now ready to pay license fees on common carrier trucks, operated by the federal government during the war emergency. Early in July, the Congress of the United States passed a statute authorizing and empowering the federal manager of common carrier operated under the supervision of the office of defense transportation to pay license fees, taxes and other impositions imposed by the state governments.

From your letter I gather that the bill for license fees of common carriers operated by the federal manager was only for the actual amount due without penalties. You want to know whether or not penalties for delinquent registration can or may be imposed by the state and collected from the federal manager of common carriers operated by the office of defense transportation during the war emergency.

Section 39-0417, of the North Dakota Revised Code of 1943, provides for the due date of all license fees and the time when registration of motor vehicles should be made and when such fees become delinquent. Section 39-0418 imposes a penalty of ten cents a day on all delinquent registrations of motor vehicles for each and every day such license fee is delinquent for not more than fifteen days, and two dollars for every thirty days or fraction thereof, not to exceed one hundred and fifty days.

It is apparent that under the above statute the penalty imposed for delinquent registration is in the nature of punishment, and that the avoidance of the penalty is offered as an incentive to owners of motor vehicles to register and license them on or before May 15 of each year.

If the position of the office of defense transportation, that motor carriers operated and controlled by them under executive order during the war emergency are exempt during such period of operation from payment of all taxes, license fees, and impositions made by the state is correct, there was, and is, of course, no basis for the collection of such license fees or taxes, except for the recent legislation passed by congress. As soon as congress required the office of defense transportation to pay license fees and state taxes upon all common carriers operated by the federal government through the manager of motor carriers, recognition was made of its liability and a statement was obtained from your office of the license fees due. In view of the fact that these fees were not paid during the period of operation of motor carriers under the control of the federal government, they did not become delinquent by reason of any neglect, but by reason of an alleged exemption asserted by the federal government. The fact that the position of the government was

recognized to the extent that it was necessary to enact legislation to enforce payment of license fees and taxes upon these carriers is an indication that the alleged exemption was justified. In view of the fact that within a reasonable time after the enactment of this legislation the office of defense transportation indicated its willingness and desire to pay the license fees, and has already procured a statement thereof, it is the opinion of this office that no penalty can be charged on licenses due from motor carriers operated by the federal government.

It is further the opinion of this office that the penalty provision of the statute did not become operative so as to impose a penalty upon the federal government on carriers under its control, and hence no penalty is chargeable to the government for the late registration and payment of license fees due on such carriers. It is, further, doubtful whether in any event penalties for late registration could be legally imposed against the federal government.

It is, therefore, the opinion of this office that you are fully justified and authorized to accept payment of the license fees due from motor carriers operated by the federal government on the basis of the original fees due without payment of penalty.

NELS G. JOHNSON

Attorney General